

REMARKS/ARGUMENTS

Favorable reconsideration of this Application in light of the following discussion is respectfully requested.

Claims 1-12 are pending in the present application.

In the outstanding Office Action, the Information Disclosure Statement (hereinafter "IDS"), filed February 27, 2004, was objected to as failing to comply with 37 C.F.R. § 1.90(a)(2); and, Claims 1-12 were rejected under the judicially created doctrine of double patenting over Claims 1-3, 5-15, and 17-19 of U.S. Patent No. 6,735,265.

The IDS, filed February 27, 2004, stands objected to for failing to comply with 37 C.F.R. § 1.90(a)(2), namely for lacking a legible copy of the cited references. Contrary to the blanket objection regarding this IDS in the Office Action, the Examiner acknowledged consideration of all the references listed on PTO-1449 form, but the initialed reference listed on row AO is crossed out. Applicant's representative left numerous telephone messages for the Examiner in an attempt to ascertain, with specificity, the nature of the Examiner's objection to the IDS, but did not receive a return phone call. Applicant respectfully traverses the objection. 37 C.F.R. § 1.98(d) states:

A copy of any patent, publication, pending U.S. application or other information, as specified in paragraph (a) of this section, listed in an information disclosure statement is required to be provided, even if the patent publication, pending U.S. application or other information was previously submitted to, or cited by, the Office in an earlier application, unless

- (1) The earlier application is properly identified in the information disclosure statement and is relied on for an earlier effective filing date under 35 U.S.C. § 120; and
- (2) The information disclosure statement submitted in the earlier application complies with paragraphs (a) through (c) of this section.
(emphasis added)

The parent Application Serial No. 09/614,208 was properly relied upon in the present Application as is evidenced by the Request for Priority filed with the Application papers. Further, Applicant believes the Examiner's objection to the IDS specifically refers to the initialed, but crossed-out reference, listed on PTO-1449 form row AO (JP 05-300014), since the references cited on rows AA and AB were initialed in acknowledgement of being considered and were not crossed out. A legible copy of the reference cited on PTO-1449 form, row AO (JP 05-300014), was provided in parent Application Serial No. 09/614,208, as evidenced by its consideration (Exhibit A). In view of the above discussion evidencing the requirements of 37 C.F.R. § 1.98(d)(1) and (2) being met, Applicant respectfully requests the objection to the IDS, filed on February 27, 2004, under 37 C.F.R. § 1.98(a)(2) be withdrawn and that the Examiner return the PTO-1449 form fully acknowledged as being considered. To whatever extent the copy of JP 05-300014 in the possession of the Examiner is illegible, Applicant herewith submits a copy of the IDS filed on February 27, 2004, and a copy of JP 05-300014 with an English Abstract and a computer-generated translation thereof (Exhibit B).

Applicant also submits herewith a Terminal Disclaimer in compliance with 37 C.F.R. § 1.321(c) referencing commonly-owned U.S. Patent No. 6,735,265. The filing of this Terminal Disclaimer is not an admission of the propriety of the rejection, but simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection. Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 U.S.P.Q.2d 1392 (Fed. Cir. 1991).

Consequently, in light of the above discussion, the application is believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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